

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Henry Golden Reese,	)	C.A. No. 2:09-1106-TLW-RSC
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
Warden, Walker State Prison,	)	
	)	
Respondent.	)	
_____	)	

This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Robert S. Carr, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge Carr recommends that this petition be dismissed without prejudice and without issuance and service of process. (Doc. # 16). Petitioner has filed objections to the Report. (Doc. # 20).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations

omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. The Court accepts the Report. The Court notes that the Report, in addition to finding that petitioner's petition should be dismissed because petitioner has not exhausted his state court remedies, also briefly mentions the issue of procedural default. See Fn. 1. A federal court will review a procedurally defaulted claim if the petitioner can demonstrate cause for the default and actual prejudice therefrom, or his actual innocence of the crimes for which he is being held. Coleman v. Thompson, 501 U.S. 722 (1991). After careful review of the record in this case, including petitioner's petition and his objections to the Report, the Court cannot conclude that petitioner has demonstrated cause for the default and prejudice therefrom, or that he has shown that he is actually innocent of the crimes to which he pled guilty.

**THEREFORE, IT IS HEREBY ORDERED** that the Magistrate Judge's Report is **ACCEPTED** (Doc. # 16), petitioner's objections are **OVERRULED** (Doc. # 20); and this petition is **DISMISSED** without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

s/ Terry L. Wooten

**TERRY L. WOOTEN**

**UNITED STATES DISTRICT JUDGE**

August 12, 2009

Florence, South Carolina